

taken in the territory of the other High Contracting Party, such evidence may be taken in any of the ways prescribed in Articles 7 and 8.

(b) For the purposes of the present convention the words—

- (1) "Taking of evidence" shall be deemed to include the taking of the statements of a Plaintiff or Defendant, on oath or otherwise, the submission to a Plaintiff, Defendant, expert, or any other person of any oath with regard to any legal proceedings and the production, identification, and examination of documents, samples, or other objects;
- (2) "Witness" includes any person (whether Plaintiff, Defendant, expert, or other person) from whom any evidence as defined above is required to be taken.

#### Article 7.

(a) The judicial authority by whom the evidence is required may, in accordance with the provisions of his law, address himself by means of "Letters of Request" to the competent authority of the country where the evidence is to be taken, requesting such authority to take the evidence.

(b) The "Letter of Request" shall be drawn up in the language of the country where the evidence is to be taken, or be accompanied by a translation in such language. Such translation shall be certified as correct by a Consular Officer of the High Contracting Party from whose judicial authority the request emanates. The "Letters of Request" shall state the nature of the proceedings for which the evidence is required, giving all necessary information in regard thereto, the names and descriptions of the parties thereto, and the names, descriptions, and addresses of the witnesses. They shall also either be accompanied by a list of interrogatories to be put to the witness or witnesses, or as the case may be, by a description of the documents, samples, or other objects to be produced, identified, or examined, and a translation thereof certified as correct in the manner heretofore provided or shall request the competent authority to allow such questions to be asked *via voce* as the parties or their representatives shall desire to ask.

(c) The "Letters of Request" shall be transmitted—

In England, by a Portuguese Consular Officer to the Senior Master of the Supreme Court of Judicature;

In Portugal, by a British Consular Officer to the President of the Court of Appeal in the district in which the evidence is to be taken.

In case the authority to whom "Letters of Request" are transmitted is not competent to execute them, the "Letters of Request" shall be forwarded without any further request to the competent authority of his own country.

(d) The competent authority to whom the "Letters of Request" are transmitted or forwarded shall give effect thereto and obtain the evidence required by the use of the same compulsory measures and the same procedure as are employed in the execution of a commission or order emanating from the authorities of his own country, except that, if a wish that some special procedure should be followed is expressed in the "Letters of Request," such special procedure shall be followed in so far as it is not incompatible with the law of the country where the evidence is to be taken.

(e) The Consular Officer, by whom the "Letters of Request" are transmitted, shall, if he so desires, be informed of the date and place where the proceedings will take place, in order that he may inform the interested party or parties who shall be permitted to be present in person or to be represented if they so desire.

(f) The execution of "Letters of Request" which comply with the preceding provisions of this Article can only be refused—

- (1) If the authenticity of the "Letters of Request" is not established;
- (2) If in the country where the evidence is to be taken the execution of the "Letters of Request" in question does not fall within the functions of the Judiciary;
- (3) If the High Contracting Party in whose territory the evidence is to be taken considers that his sovereignty or safety would be compromised thereby.

(g) In every instance where the "Letters of Request" are not executed by the authority to whom they are addressed, the latter will at once inform the Consular Officer by whom they were transmitted, stating the grounds on which the execution of the "Letters of Request" has been refused, or the judicial authority to whom they have been forwarded.

#### Article 8.

(a) The evidence may also be taken, without any request to or the intervention of the authorities of the country in which it is to be taken, by a person in that country directly appointed for the purpose by the court by whom the evidence is required. A Consular Officer of the High Contracting Party whose court requires the evidence or any other suitable person may be so appointed.

(b) A person so appointed to take evidence may request the individuals named by the court appointing him to appear before him and give evidence. He may take all kinds of evidence which are not contrary to the law of the country where the evidence is being taken and shall have power to administer an oath.

(c) Requests to appear issued by such person shall, unless the recipient is a subject or citizen of the High Contracting Party for whose judicial authority the evidence is required, be drawn up in the language of the country where the evidence is to be taken, or be accompanied by a translation into such language.

(d) The evidence may be taken in accordance with the procedure recognized by the law of the country for whose judicial authority the evidence is required, and the parties will have the right to be present or to be represented by barristers or solicitors of that country or by any persons competent to appear before the courts of either of the countries concerned.

(e) It is understood that where the method of taking evidence referred to in this Article is employed, the procedure must be entirely voluntary and no measures of compulsion can be employed and the admissibility of evidence so taken remains a matter for the determination of the respective courts of the High Contracting Parties in accordance with their law.

#### Article 9.

The fact that an attempt to take evidence by the method laid down in Article 8 has failed owing to the refusal of any witness to appear or to give evidence, does not preclude a request being subsequently made in accordance with Article 7.

#### Article 10.

(a) Where evidence is taken in the manner provided in Article 7, the High Contracting Party, by whose judicial authority the "Letters of Request" are addressed, shall repay to the other High Contracting Party any expenses incurred by the competent authority of the latter in the execution of the request in respect of any charges and expenses payable to witnesses, experts, interpreters, or translators, the cost of obtaining the attendance of witnesses who have not appeared voluntarily, and the charges and expenses payable to any person whom such authority may have deputed to act in cases where the law of his own country permits this to be done, and any charges and expenses incurred by reason of a special procedure being requested and followed. These expenses shall be such as are usually allowed in similar cases in the courts of the country where the evidence has been taken.

(b) The repayment of these expenses shall be claimed by the competent authority by whom the "Letters of Request" have been executed from the Consular Officer by whom they were transmitted when sending to him the documents establishing their execution.

(c) Except as above provided, no fees of any description shall be payable by one High Contracting Party to the other in respect of the taking of evidence.

#### IV.—JUDICIAL ASSISTANCE FOR POOR PERSONS, IMPRISONMENT FOR DEBT, AND SECURITY FOR COSTS.

##### Article 11.

The subjects or citizens of one High Contracting Party shall enjoy in the territory of the other High Contracting Party a perfect equality of treatment with subjects or citizens of that High Contracting Party as regards free judicial assistance for poor persons and imprisonment for debt; and, provided that they are resident in any such territory, shall not be compelled to give security for costs in any case where a subject or citizen of such other High Contracting Party would not be so compelled.

#### V.—GENERAL PROVISIONS.

##### Article 12.

Any difficulties which may arise in connection with the operation of this Convention shall be settled through the diplomatic channel.

##### Article 13.

The present Convention, of which the English and Portuguese texts are equally authentic, shall be subject to ratification. Ratifications shall be exchanged in Lisbon.

The Convention shall come into force one month after the date on which ratifications are exchanged and shall remain in force for three years after the date of its coming into force.

If neither of the High Contracting Parties shall have given notice through the diplomatic channel to the other not less than six months before the expiration of the said period of three years of his intention to terminate the Convention, it shall remain in force until the expiration of six months from the day on which either of the High Contracting Parties shall have given notice to terminate it.